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SUBJECT: HONDURAS: 2005-2006 INCSR PART II, MONEY  
LAUNDERING AND FINANCIAL CRIMES

REF: SECSTATE 210351

1. Per reftel, Post provides its submission for the 2005-2006 International Narcotics Control Strategy Report (INCSR) Part II, Money Laundering And Financial Crimes.

#### Introduction and General Questions

2. Three years after passing a new law against money laundering, the government of Honduras has made considerable progress in implementing the law and establishing and training the entities responsible for the investigation of financial crimes. Department of Treasury officials and Post continue to work to improve cooperation among these entities. Sustained progress will depend upon increased commitment from the government of Honduras to prosecute financial crimes aggressively.

3. Honduras is not an important regional or offshore financial center and is not considered to have a significant black market for smuggled goods (though there have been high-profile smuggling cases involving gasoline and other consumer goods). Money laundering, however, does take place in Honduras, primarily through the banking sector, but also through currency exchange houses and front companies. The vulnerabilities of Honduras to money laundering stem primarily from significant trafficking of narcotics, especially cocaine, through the region, though smuggling of contraband may also generate funds that are laundered through the banking system. Money laundering in Honduras derives from both domestic and foreign criminal activity, and the proceeds are controlled by local drug trafficking organizations and organized crime syndicates. Honduras is not experiencing an increase in financial crimes such as bank fraud. It is not a matter of government policy to encourage, facilitate, or engage in laundering the proceeds from illegal drug transactions, from other serious crimes, or from terrorist financing. However, corruption remains a serious problem, particularly within the judiciary and law enforcement sectors.

#### Laws and Regulations to Prevent Money Laundering/Terrorist Financing

4. Money laundering has been a criminal offense in Honduras since 1998, when the passage of Law. No. 27-98 criminalized the laundering of narcotics-related proceeds and introduced various record keeping and reporting requirements for financial institutions. However, weaknesses in the law, including a narrow definition of money laundering, made it virtually impossible to successfully prosecute the crime.

5. In 2002, Honduras passed Decree No. 45-2002, which greatly strengthened its legal framework and available investigative and prosecutorial tools to fight money laundering. Under the new legislation, the definition of money laundering was expanded to include the transfer of assets that proceed directly or indirectly from trafficking of drugs, arms, human organs or people, auto theft, kidnapping, bank and other forms of financial fraud, and terrorism, as well as any sale or movement of assets that lacks economic justification. The penalty for money laundering is a prison sentence of 15-20 years. The law also requires all persons entering or leaving Honduras to declare, and if asked, present, money in cash and convertible securities ("titulos valores de convertibilidad inmediata") that they are carrying if the amount exceeds \$10,000 or its equivalent.

6. Decree No. 45-2002 also created a financial information unit, the Unidad de Informacion Financiera (UIF), within the Honduran National Banking and Insurance Commission. Banks and other financial institutions are required to report to the UIF any currency transactions over \$10,000 in dollar denominated accounts or the equivalent in local currency accounts. The law requires the UIF and reporting institutions to keep a registry of reported transactions for five years. Banks are required to know the identity of all their clients and depositors, regardless of the amount of a client's deposits, and to keep adequate records of the information. The law also includes banker negligence provisions that make individual bankers subject to two- to five-year prison terms

if, by "carelessness, negligence, inexperience or non-observance of the law, they permit money to be laundered through their institutions." All of the above requirements apply to all financial institutions that are regulated by the National Banking and Insurance Commission, which include state and private banks, savings and loan associations, bonded warehouses, stock markets, currency exchange houses, securities dealers, insurance companies, credit associations, and casinos. The law does not, however, extend to the activities of lawyers or accountants.

17. Decree No. 45-2002 requires that a public prosecutor be assigned to the UIF. In practice, two prosecutors are assigned to the UIF, each on a part-time basis, with responsibility for specific cases divided among them depending on their expertise. The prosecutors, under urgent conditions and with special authorization, may subpoena data and information directly from financial institutions. Public prosecutors and police investigators are permitted to use electronic surveillance techniques to investigate money laundering.

18. Under the Criminal Procedure Code, reporting individuals such as bank officials are protected by law with respect to their cooperation with law enforcement authorities. However, some have alleged that their personal security is put at risk if the information they report leads to the prosecution of money launderers. This has not been an issue throughout 2005, however, as only cases originating from the police and prosecutors have been presented in court.

19. There had been some ambiguity in Honduran law concerning the responsibility of banks to report information to the regulating authorities and the duty of banks to keep customer information confidential. A new law passed in September 2004, the Financial System Law (Decree No. 129-2004) clarifies this ambiguity, explicitly stating that provision of information demanded by regulatory, judicial, or other legal authorities shall not be regarded as an improper divulgence of confidential information.

10. In late December 2004, Decree 24-2004 created the InterAgency Commission for the Prevention of Money Laundering and Financing of Terrorism (CIPLAFT). The group was tasked as the coordinating entity responsible for ensuring that all anti-money laundering and anti-financing of terrorism systems operate efficiently and consistently with all relevant laws, regulations, resolutions, and directives. The group meets every three months and includes representatives from UIF, the prosecuting office, the police and other offices that touch on the subject of money laundering and terrorism finance. While the meetings represent a good opportunity to identify and discuss general ideas and themes, more case specific, working level meetings have been proposed in an attempt to increase the efficiency of the process.

#### Prosecutions in 2005

11. Prior to 2004, there had been no successful prosecutions of money laundering crimes in Honduras. In 2004, the authorities arrested 16 persons for money laundering crimes, issued six additional outstanding arrest warrants, and secured five convictions. Six additional convictions were made in 2005.

#### Measures to Prevent Terrorist Financing

12. The government of Honduras has been supportive of counterterrorism efforts. Decree No. 45-2002 states that an asset transfer related to terrorism is a crime; however, terrorist financing has not been identified as a crime itself. The law does not explicitly grant the government the authority to freeze or seize terrorist assets; however, on separate authority, the National Banking and Insurance Commission has issued freeze orders promptly for the organizations and individuals named by the UN 1267 Sanctions Committee and those organizations and individuals on the list of Specially Designated Global Terrorists designated by the United States pursuant to Executive Order 13224 (on terrorist financing). The Ministry of Foreign Affairs is responsible for instructing the Commission to issue freeze orders. The Commission directs Honduran financial institutions to search for, hold, and report on terrorist-linked accounts and transactions, which, if found, would be frozen. The Commission has reported that, to date, no accounts linked to the entities or individuals on the lists have been found in the Honduran financial system.

13. While Honduras is a major recipient of flows of remittances (estimated at \$1.5 billion in 2005), there has been no evidence linking these remittances to the financing of terrorism. Remittances primarily flow from Hondurans living in the United States to their relatives in Honduras. Most remittances are sent through wire transfer or bank services, with some cash probably being transported physically from the United States to Honduras. There is no

significant indigenous alternative remittance system such as hawala operating in Honduras, nor is there any evidence that charitable or non-profit entities in Honduras have been used as conduits for the financing of terrorism.

14. Honduras signed the 1999 International Convention for the Suppression of the Financing of Terrorism on November 11, 2001, and ratified the convention on March 25, 2003.

#### Free Trade Zones

15. Under Honduran legislation, companies may register for "free trade zone" status, and benefit from the associated tax benefits, regardless of their location in the country. Companies that wish to receive free trade zone status must register with the Office of Productive Sectors in the Ministry of Industry and Commerce. The majority of companies with free trade zone status operate mostly in the textile and apparel industry. There is no indication that free trade zones are being used in trade-based money laundering schemes or by the financiers of terrorism.

#### International Cooperation

16. Honduras cooperates with U.S. investigations and requests for information pursuant to the 1988 UN Drug Convention. Honduras has signed memoranda of understanding to exchange information on money laundering investigations with Panama, El Salvador, Guatemala, Mexico, Peru, Colombia, and the Dominican Republic. Honduras strives to comply with the Basel Committee's "Core Principles for Effective Banking Supervision," and the new Financial System Law (Decree No. 129-2004) passed in September 2004 is designed to improve compliance with these international standards. At the regional level, Honduras is a member of the Central American Council of Bank Superintendents, which meets periodically to exchange information.

17. Honduras is a party to the 1988 UN Drug Convention, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the UN International Convention against Transnational Organized Crime, and the UN International Convention for the Suppression of the Financing of Terrorism. Honduras signed the OAS Inter-American Convention on Terrorism in June 2002, ratified the agreement on September 22, 2004, and became a party to the agreement when it deposited its instruments of ratification on November 23, 2004. Honduras signed the UN Convention Against Corruption on May 17, 2004. Honduras is a member of the Organization of American States Inter-American Drug Abuse Control Commission (OAS/CICAD) Group of Experts to Control Money Laundering and the Caribbean Financial Action Task Force (CFATF). In mid-2005, the Honduran UIF was admitted as a member in the Egmont Group, signifying that the Honduran Unit meets the international standards of Financial Information Units. The membership will allow Honduras to share information with FIUs of other member countries in an effort to increase international cooperation and enhance effectiveness.

18. No specific written agreement exists between the United States and Honduras to establish a mechanism for exchanging adequate records in connection with investigations and proceedings relating to narcotics, terrorism, terrorist financing, and other crime investigations. However, Honduras has cooperated, when requested, with appropriate law enforcement agencies of the U.S. government and other governments investigating financial crimes.

#### Asset Forfeiture and Seizure Legislation

19. Congress first enacted an asset seizure law in 1993 that subsequent Honduran Supreme Court rulings substantially weakened. Decree No. 45-2002 strengthened the asset seizure provisions of the law, establishing an Office of Seized Assets (OABI) under the Public Ministry. The law authorizes the Office of Seized Assets to guard and administer "all goods, products or instruments" of a crime, and states that money seized (or money raised from the auctioning of seized goods) should be transferred to the public entities that participated in the investigation and prosecution of the crime. Under the Criminal Procedure Code, when goods or money are seized in any criminal investigation, a criminal charge must be submitted against the suspect within sixty days of the seizure. If one is not submitted, the suspect has the right to demand the release of the seized assets.

20. Decree No. 45-2002 is not entirely clear on the issue of whether a legitimate business can be seized if used to launder money which derives from criminal activities. The Chief Prosecutor for Organized Crime maintains that the authorities do have this power, since once a "legitimate" business is used to launder criminal assets, it ceases to be "legitimate" and is subject to seizure proceedings. However, this authority is not explicitly granted in the law, and there has been no test case to date which would set an interpretation. There are currently no new laws being

considered regarding seizure or forfeiture of assets of criminal activity.

21. The total value of assets seized since the 2002 law came into effect is estimated at \$6.4 million and around \$4.6 million in seized assets (cars, houses, boats, etc.) as of December 2005. The lack of clear records, and differences in accounting between OABI, the police and the investigators office, make prior year comparisons difficult. Most of these seized assets are alleged to have derived from crimes related to drug trafficking; none of the seized assets are suspected of being connected to terrorist activity. The law allows for both civil and criminal forfeiture, and there are no significant legal loopholes that allow criminals to shield their assets.

22. However, OABI has not established firm control over the asset seizure and forfeiture process. Implementation of the existing law, and the process of equipping OABI to maintain control over seized assets and effectively dispose of them, has been slow and ineffective. The two implementing regulations governing OABI were not finalized and published until more than a year after the passage of the law, and the key regulation that governs the distribution of assets is still pending action by the Attorney General. Plans to build separate offices and a warehouse for this entity are still incomplete, resulting in seized assets currently being kept in various locations under dispersed authority. Money seized is kept in various accounts without clear records of control, or kept in cash as evidence. Due to the absence of an approved implementing regulation on distribution of assets, the Public Ministry has on several occasions used seized cash to pay certain employees' salaries, without the money's first having passed through a proper legal process for disposition. Similarly, assets seized, such as vehicles, property, and boats, are in many cases left unused, rather than being distributed for use by government agencies. Outside of the police investigative unit, for example, at least fifty cars seized by OABI are left to rust while twenty officers take turns using the unit's one active car to pursue investigations.

23. There is no evidence that traffickers, organized crime organizations, or terrorist organizations have taken retaliatory actions related to money laundering/terrorist financing investigations, government cooperation with the USG, or seizure/freezing of assets.

#### Conclusion

24. In 2005, the government of Honduras continued their positive steps to implement Decree No. 45-2002. However, the different units involved in the fight against money laundering continue to suffer from lack of resources and limited interagency communication. Further progress in implementing the new money laundering legislation will depend on the training and retention of personnel familiar with money laundering and financial crimes and improved ability to target and pursue more cases that have a higher probability of success. Key to enabling these agencies is to free more resources from OABI. The government of Honduras should continue to support the developing government entities responsible for combating money laundering and other financial crimes, and ensure that resources are available to strengthen its anti-money laundering regime.

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